

ARKANSAS SUPREME COURT

No. CR 06-213

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered May 4, 2006

FREDERICK PENNINGTON, JR.
Petitioner

PRO SE MOTION FOR
RECONSIDERATION OF MOTION
FOR BELATED APPEAL OF ORDER
[CIRCUIT COURT OF PULASKI
COUNTY, CR 77-1933, CR 77-1934, CR
77-1939, HON. JOHN LANGSTON,
JUDGE]

v.

STATE OF ARKANSAS
Respondent

MOTION DENIED

PER CURIAM

In 1978, petitioner Frederick Pennington, Jr. entered a plea of guilty to capital felony murder, first-degree battery, and multiple counts of aggravated robbery. An aggregate sentence of life imprisonment was imposed.

In 2005, petitioner filed in the trial court a *pro se* pleading entitled “New Rule of Law for Mandamus Motion to Withdraw Guilty Plea,” which was denied on June 10, 2005, on the grounds that it was untimely and constituted an unauthorized subsequent petition pursuant to Criminal Procedure Rule 37.2(b). On July 19, 2005, petitioner filed two notices of appeal from the June 10, 2005, order.

When the appeal record was tendered to this court, our clerk correctly declined to lodge it because the record did not contain a notice of appeal filed within the thirty-day period allowed for

filing a notice of appeal under Ark. R. App. P.--Civ. 4(a).¹ Petitioner sought leave from this court to proceed with a belated appeal of the order. The motion was denied. *Pennington v. State*, CR 06-213 (Ark. April 6, 2006) (*per curiam*).

Now before us is petitioner's motion for reconsideration of the motion for belated appeal. As grounds for the motion, petitioner asserts, as he did in the original motion, that he mailed a notice of appeal to the clerk and that it was timely filed. He does not, however, offer any proof that a notice of appeal was either timely filed or indeed received by the clerk within the thirty-day period. Petitioner accuses the circuit clerk of engaging in a conspiracy to deny him his right to appeal in this case and in another unrelated case and asks this court to take notice that he mailed the notice of appeal to several persons besides the clerk who could attest that they received it within the thirty-day period. Petitioner offers no substantiation for the allegation that the clerk has acted to deny him his right to appeal, and the fact that other persons may have received the notice does not establish that a notice of appeal was filed or that a notice of appeal was timely received by the clerk.

As we said when the motion for belated appeal was denied, it is not the responsibility of the circuit clerk or anyone other than the petitioner to perfect an appeal. *See Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*). The litigant who claims to have mailed an item has the burden of proving that it reached the circuit clerk by the date it was due to be filed. *See Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (*per curiam*). The bare allegation that a notice of appeal was mailed is not good cause to grant a belated appeal. *Skaggs v. State*, 287 Ark. 259, 697 S.W.2d 913 (1985) (*per curiam*). As petitioner has not established that the clerk received a notice

¹The final day to file a timely notice of appeal from the June 10, 2005, order was Monday, July 11, 2005.

of appeal within thirty days of the date the order was entered but did not file it, and he has stated no good cause for his failure to file a timely notice of appeal, the motion for reconsideration is denied.

Motion denied.